FILED
NOV 25 1991
OFFICE OF THE CLERK

No. 90-1488

In The

Supreme Court of the United States

October Term, 1991

SUE SUTER, et al.,

Petitioners,

v.

ARTIST M., et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' SUPPLEMENTAL MEMORANDUM REGARDING NEW SUPPORTING AUTHORITY

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Dated: November 25, 1991

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The Court of Appeals for the Third Circuit recently provided additional evidence that enforcement of the reasonable efforts requirement will not cause any substantial increase in child welfare litigation in the federal courts. In *Winston v. Children and Youth Services of Delaware County*, No. 90-1788 (3d Cir. November 7, 1991),[1] the Court of Appeals rejected a challenge based on the reasonable efforts requirement to Pennsylvania's policies

[1] A copy of the *Winston* opinion has been lodged with the Clerk of the Supreme Court.

and practices regarding visitation for parents whose children had been placed in the State's custody.[2]

In assessing the merits of the plaintiffs' claim, the Court of Appeals in *Winston* first applied the three-prong test set forth by this Court in *Golden State Transit Corp. v. City of Los Angeles*, 110 S. Ct. 444 (1989), and *Wilder v. Virginia Hospital Association*, 110 S. Ct. 2510 (1990), and confirmed that the reasonable efforts requirement creates enforceable rights under 42 U.S.C. § 1983. Consistent with the decisions of the District Court and the Court of Appeals in this case, the *Winston* Court held that the reasonable efforts requirement is intended to benefit families, imposes a binding obligation on States accepting federal funding under Title IV-E, and is sufficiently specific to be judicially enforceable. Slip op. at 17-20.

The *Winston* Court then concluded, however, that the plaintiffs had failed to establish a violation of that right. Relying on the Seventh Circuit's decision in this case and on this Court's decision in *Wilder*, the Court in *Winston* recognized that Congress, while creating a binding obligation, had afforded States substantial discretion in how they implement the reasonable efforts requirement. Slip op. at 22-23. After examining the record, which included expert testimony, the Third Circuit concluded that Pennsylvania had exercised that discretion appropriately in providing one hour visits to parents every other week. *Id.* at 22-24. In other words, the efforts made by Pennsylvania were within the range of efforts permitted the State

[2] The *Winston* plaintiffs also unsuccessfully challenged Pennsylvania's visitation policies and practices on constitutional grounds. Slip. op. at 24-28.

under 42 U.S.C. § 671(a)(15), and the *Winston* plaintif failed to sustain their heavy burden to show otherwis *Id.* at 24. *See also Wilder,* 110 S. Ct. at 2523 and n.18. Aft dismissing the plaintiffs' remaining arguments, the Cou of Appeals affirmed the District Court's judgment i favor of the State and County defendants. Slip op. at 3

Winston thereby confirms that enforcement of th reasonable efforts requirement will not subject federa courts to the "flood of individual lawsuits," Defendant Brief at 35, which defendants unreasonably fear.

Respectfully Submitted,

/s/ Patrick T. Murphy

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